

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIE D. FINLEY,

Defendant.

:

:

Case No. 3:03cr013(2)

:

JUDGE WALTER HERBERT RICE

:

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #180) IN ITS
ENTIRETY AND OVERRULING DEFENDANT'S OBJECTIONS THERETO
(DOC. #182); JUDGMENT TO ENTER IN FAVOR OF PLAINTIFF AND
AGAINST DEFENDANT, CONSTRUING DEFENDANT'S MOTION FOR
MODIFICATION OF SENTENCE PURSUANT TO 18 U.S.C. §3582 AS A
MOTION PURSUANT TO 28 U.S.C. § 2255 AND TRANSFERRING
SAME TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in her Report and Recommendations filed October 12, 2011 (Doc. #180), as well as upon a thorough *de novo* review of this Court's file, a review of previous post conviction matters filed by the Defendant and the applicable law, this Court adopts said Report and Recommendations in their entirety and overrules the Defendant's Objections thereto (Doc. #182).

Accordingly, judgment will enter in favor of the Plaintiff and against

Defendant herein, construing Defendant's Motion for Modification of Sentence pursuant to 18 U.S.C. § 3582 as a Motion pursuant to 28 U.S.C. § 2255 and transferring said Motion, so construed, to the United States Court of Appeals for the Sixth Circuit.

As an aside, the premise behind Defendant's Motion, that "the District Court erred in sentencing [him] to a consecutive term of imprisonment under 18 U.S.C. § 924(c) when a greater minimum sentence was provided by 21 U.S.C. § 841(B)" has been refuted by a recent decision of the United States Supreme Court in *Abbott v. United States*, ___ U.S. ___, 131 S.Ct. 18 (2010).

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

December 22, 2011



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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